

## **REMARKS**

### **Examiner Interview**

Applicant appreciates the courtesy of the Examiner to conduct telephonic interviews on April 12, 2006 and April 25, 2006. At the April 12, Applicant present arguments to distinguish the prior art cited and applied in the Office Action in relation to the independent claims. In the April 25 interview, the Examiner indicated certain claims to be allowable. In particular, the Examiner indicated that independent claims 8, 20 and 26 are allowable, pending further search and peer review.

### **Allowable Subject Matter**

As noted by the Examiner in the Interview Summary record dated April 26, 2006, claims 8, 20 and 26 are allowable, pending further search and peer review.

### **Summary of the Response**

Claims 1-26 remain pending in this application. Reexamination and reconsideration of the present application are respectfully requested.

### **Claim Rejections Under 35 USC 103**

Claims 1-3, 5-9, 11-15, 17-21, 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Nymeyer. Claims 4, 10, 16 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Saito. As noted above, the Examiner has since indicated independent claims 8, 20 and 26 to be allowable.

Applicant respectfully submits that the subject matter of remaining independent claims 1, 13 and 25 should also be allowable over the references of record.

On the onset, Applicant notes it appears that Walker qualifies as a 102(e)-type reference in the present 103 rejection. However, given the traversal of the rejection below, Applicant has not yet considered “swearing” behind Walker, but reserves the right to do so should the need arise at a later date.

a. Recap of the Invention

Given the traversal of the earlier Office Actions, it appears that the Examiner now appreciates that the computer implemented auctioning process of the present invention is buyer initiated or buyer driven. This is different from the conventional auctioning processes, which are seller initiated or seller driven.

However, in the present Office Action, the Examiner appeared to ignored some of the essential features of the inventive process, including the elements of auctioning, bidding, and selecting by the buyer a bidder from several bids.

In accordance with one aspect of the present invention, at the outset of the auction, the biddee (not the bidders) specifies the N best bids to be displayed for the biddee’s consideration in awarding the bid to a bidder/seller among all the seller bidders. By specifying N at the start of the bid process, the bidders are “motivated” to try for the bid even though some of them may not qualify for the best bid based on price alone, but may stand to be awarded the bid based on factors other than best pricing. The biddee has more choices in selecting a seller bidder from N seller bidders, based on factors other than best pricing. Accordingly, the higher the value of N, the more options for the biddee buyer. However, while a larger N provides more options, it is

also inherent in this process that the biddee would have to live with the compromise of less competitive price bidding in view of the increased opportunities for the bidders to compete on factors other than pricing.

In other words, on the seller bidder side, since the value of  $N$  is made known to the seller bidders on the outset of the auction, seller bidders would bid in a way such that even when one of the sellers knows that it cannot bid the lowest price, such seller can still have a chance to compete by trying to have its bid fall within the  $N$  best bids to obtain consideration by the buyer biddee. By requesting to see fewer bids (smaller  $N$ ), the buyer biddee would have less opportunity to evaluate service providers based on factors other than pricing, thereby encouraging fierce price competition (e.g., when  $N=1$ , maximum price competition, but no option for the biddee). The reverse is true, when  $N$  is larger, the biddee has more choices in selection from  $N$  best bids from bidders, but the bidders would tend not to bid as aggressively, knowing that their bids would be considered as long as they fall within the  $N$  best bids.

The net effect is that the biddee by specifying  $N$  best bids, can effectively control the price/options tradeoff at the onset of the auction process, and encourage the bidders to provide their lowest bids when pricing is important (small  $N$ ). This lets the buyers make their final decision based on factors in addition to price, and yet at the lowest price possible given the options.

b. Distinctions from the References

The pending independent claims 1, 13 and 25 specify an auctioning process/apparatus, in which the bidders are sellers of services sets forth the N best seller bids to be considered, and the buyer selects a seller from the N bidders.

None of the prior art, taken alone or in combination, discloses or makes obvious the present invention.

c. Walker

As the Examiner acknowledged in the Office Action, Walker is not directed to an auction process, much less a buyer/bidder driven auction, in which seller bids to win the buyer, and the buyer selects from N best bids. Instead, Walker is directed to a conditional purchase offer (CPO) management system that manages a process in which CPOs from buyers (at a customer defined price and condition) are evaluated against a number of CPO rules defined by sellers, to determine whether any seller is willing to accept a given CPO. CPO is not a request for bid in an auction (as price has been pre-defined by the customer), and acceptance of a CPO is not bidding by sellers. Further, a buyer does not select from several seller bids, as once the buyer's CPO has been accepted by a particular seller meeting buyer's requirement of the CPO, the deal is firm, and there would be no opportunity for the buyer to select a particular seller. Since the buyer pre-set the conditions in a CPO, buyer does not need to specify the N best bids to be considered to evaluate conditions after the bidding/auctioning process. Accordingly, the essential elements in the invention are missing in Walker!

The Examiner referred to specific sections in Walker, where support for the claimed limitations are supposed to be found. However, Applicant failed to follow how the sections in Walker as referenced by the Examiner in the office action are applicable. For example,

Applicant does not see where at col. 2, lines 50-65, did Walker disclosed that buyer limits the number of bids to be considered at an auction because of tradeoff, as proposed by the Examiner. Instead, Walker disclosed at such section that CPO rules are set by sellers! The Examiner also referred to Fig. 15 to support that the buyer is notified of the bids, and the buyer eventually selects a bidder. Instead, Fig. 15 shows a seller's CPO rule table by a Revenue Management System (RMS).

The Examiner clearly misread the Walker reference. Contrary to the understanding of the Examiner, Walker is not directed to an auction process, and further one in which a buyer specifies the N best bids to be considered at the start of the auction, and the buyer selects from a bidder from such N best bids. The CPO process involves buyer offer and seller acceptance, which does not involve auctioning. The CPO buyer does not get to choose from the sellers. Walker in no way relates to the elements required by claims 1, 13 and 25.

d. Nymeyer

Nymeyer does not make up for the deficiencies of Walker. Nymeyer does not relate to buyer drive auctions, in which buyer specifies the N best bids to be considered, and eventually selects from the N best bids. Nymeyer is a special purpose computer that matches orders and establishes market price in an auction market for fungible goods. Priced orders to buy are matched with priced orders to sell. The process does not involve buyer selection of N best bids. In fact, Nymeyer specifically teaches away from buyer selection, as it plainly stated, for example at col. 1, lines 5-11, that the system establishes exchange prices for any fungible goods without requiring the exercise of human judgment as a substantial factor in price determination. Further, it is noted that fungible goods are commodities that do not involve the factors and considerations

(e.g., often personal) found in services. Hence, Nymeyer is not dealing with auction of services. Accordingly, even if Nymeyer can somehow be combined with Walker in the manner suggested only by the Examiner, such combination would not obtain the invention in claims 1, 13 and 25.

Further, there is no incentive or suggestion to make such combination in the first place. Given the distinctive approach to different problems solved by each reference, such combination is only made possible by hindsight reconstruction, given the disclosure of the present invention.

d. Saito

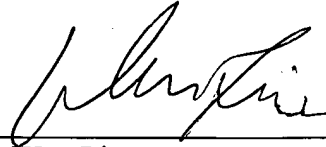
Saito also does not make up for the deficiencies of Walker. Saito does not disclose or suggest any of the deficiencies of Walker noted above. Saito is also not directed to a buyer driven auction.

## **CONCLUSION**

In view of all the foregoing, Applicant submits that the claims pending in this application are patentable over the references of record and are in condition for allowance. Such action at an early date is earnestly solicited. **The Examiner is invited to call the undersigned representative to discuss any outstanding issues that may not have been adequately addressed in this response.**

Respectfully submitted,

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